

CANADIAN ENVIRONMENTAL
ASSESSMENT ACT
FIVE YEAR REVIEW

PROVINCIAL AND TERRITORIAL
INPUT

BACKGROUND REPORT

TRENDS IN ENVIRONMENTAL ASSESSMENT

APRIL 2000

CEAA FIVE YEAR REVIEW

PROVINCIAL AND TERRITORIAL INPUT

TRENDS IN ENVIRONMENTAL ASSESSMENT

Introduction

This discussion paper is one of several papers prepared on behalf of the provincial and territorial Environmental Assessment Administrators across the country as part of the provincial/territorial response to the federal government's review of the *Canadian Environmental Assessment Act* (CEAA).¹

This paper is based on a review of key published and unpublished papers on trends in environmental assessment, in addition to discussions with those provinces proposing new initiatives and changes to environmental assessment (EA) legislation. Accordingly, the paper provides a brief overview of EA legislation in the provinces and the Yukon and documents emerging provincial and territorial trends in EA.

The main conclusions of this paper are that:

- Provincial and territorial EA legislation has evolved and improved in the five years since CEAA became law. This trend will continue as better decision making regimes are developed to meet the ongoing needs of provinces and territories regarding sustainability and resource management objectives. This ongoing evolution needs to be recognized in any changes made to CEAA as part of the five year review.
- The specific application of EA in each province and territory is unique to the circumstances of each provincial or territorial government. CEAA must be responsive to these differences when conducting joint reviews. A rigid "one-size fits all" approach to the application of CEAA is not desirable.

¹ The lead author of this paper was Ms. Joanne McKenna

- Provinces and territories are developing more comprehensive review processes that link planning level EA to post-review permitting processes and that place project assessment in the context of other frameworks for managing and achieving sustainability.

Overview of Environmental Assessment Processes and Recent Initiatives In the Provinces and the Yukon

This section describes initiatives that are currently being explored by various jurisdictions with respect to EA. These initiatives range from the introduction of efficiency-related measures, including streamlining the number and type of projects being assessed, to the development of regulated time lines for decision making in existing EA processes, and the integration of resource management and planning issues into traditional EA frameworks.

For each jurisdiction, background is provided on the respective EA legislation currently in place. The background information draws substantially on an earlier paper prepared for the Canadian Environmental Assessment Agency entitled "Trends in Environmental Assessment" (David Lawrence, Lawrence Environmental, August 1999).

❖ BRITISH COLUMBIA

Background

The British Columbia *Environmental Assessment Act* (the *Act*) is administered by an independent agency, the Environmental Assessment Office (EAO). Projects are assessed in the context of prevailing land use policies, broad provincial land use designations and more site-specific local government land use designations (zoning). Regional assessments may be conducted as part of the ongoing state of environmental monitoring, or modified sub-regional assessments may be required as context to land use initiatives or may be triggered by project specific assessments.

For example, as a result of a proposal for a community development (Bamberton town site proposal) on a former industrial site located in Saanich Inlet, the need for a comprehensive assessment of the water quality of Saanich Inlet, a marine inlet on Vancouver Island, was identified. Relevant provincial agencies undertook the work, in cooperation with federal and local government authorities and in consultation with First Nations and the public. This sub-regional assessment provided the necessary background information for the specific project assessment. The information was accessed by the proponent for submission regarding the proposal and was relied on by agencies in later project specific considerations.

Further specific issues relating to the range of effects analyzed under the *Act* are assessed in the context of public policy. For example, proposed projects must be able to meet existing environmental objectives and standards. Where policy is lacking, the EAO seeks direction for the development of the policy as a context for completing the review. The purpose of the *Act* is to promote sustainable development through protecting the environment and fostering a strong economy and social well-being and serves as an overall guide to the assessment process.

Project specific assessment under the *Act* is undertaken on projects that exceed prescribed thresholds which relate to a range of sectors as set out in regulation. The *Act* legislates timelines and provides a staged approach to assessment of reviewable projects. At all stages, the application is also subject to a mandatory public comment period.

After preliminary consultation and data collection, the proponent submits a formal application to the EAO. To be accepted for review, the application must meet basic information requirements set out in the *Act*. The EAO then establishes a project committee comprised of provincial ministries, federal departments, First Nations and local government and, when relevant, neighboring jurisdictions. The review of an application by the project committee takes public, First Nations, local government and agency comments into account.

If potential impacts of the project, as identified in the application and by subsequent government and public review, can be satisfactorily addressed through avoidance, mitigation or compensation, the project may be referred to Ministers for a decision at the end of this stage (Stage 1).

In cases where more information is required to fully identify and/or address potential adverse impacts of the project, the review proceeds to a second Project Report Stage (Stage 2). A proponent is required to prepare and deliver a more comprehensive impact assessment document (Project Report) based on detailed specifications provided by project committee and the EAO. The Project Report is screened by the project committee and the EAO. If it meets the information requirements set out in the specifications, the Project Report is accepted for further review and subjected to public comment. If all remaining issues from Stage 1 have been satisfactorily addressed by the end of the legislated time period for Stage 2, the project may then be referred to Ministers for a decision.

The Ministers have the power to: approve the project with or without conditions; reject the project; or, in cases of projects where mitigation measures cannot address adverse effects or highly controversial projects, order the project to proceed to a public hearing. To date, no project has required a public hearing and all substantive technical issues have been resolved either at the end of the first or second stage of review.

The *Act* has specific provisions for transparency and public access to information. The EAO maintains a comprehensive public registry and a website where applications, project committee reports and public comments are available to the public. When a decision is taken by Ministers, the decisions and reasons for the decisions are made public.

The *Act* also provides for category assessments. In 1997, the EAO completed a two year review of salmon aquaculture practices in British Columbia, including whether or not the public policy framework for the management of the industry achieved the goals of sustainability established by the *Act*. The review served as a strategic environmental assessment, and recorded the state of scientific information on salmon aquaculture and the diverse and conflicting values involved. It considered policy alternatives, alternative technologies, cumulative impacts and developed generic siting criteria for

salmon aquaculture projects. It recommended many changes to the existing management framework. The review was used as the basis for the Salmon Aquaculture Policy announced in October 1999, which set the policy framework for licensing of salmon aquaculture facilities.

Recent Initiatives

Since its inception in 1995 with proclamation of the *Act*, the EAO has continually worked to improve and refine implementation of the process. These improvements have been made partly as a result of experience in implementing the *Act* and partly in response to recommendations and concerns raised in a number of studies.

In 1997, the EAO hired an independent consultant to conduct a review of the EA program exploring opportunities to improve efficiency and effectiveness of the EA process. The EAO is currently responding to the consultant's report. For example the *British Columbia Reviewable Projects Regulation* was amended in 1998 to make the reviewability thresholds more impact-based and consistent across project sectors.

In 1999, the EAO undertook two studies in response to issues raised by the British Columbia Business Task Force about the perceived complexity and length of the EA process and its lack of integration with permit reviews.

The first study compared the British Columbia EA process with EA processes in other selected jurisdictions. Based on the North American jurisdictions examined, the British Columbia process was found to be as efficient as other jurisdictions. The study concluded that it is the characteristics of the individual project that determine complexity of a review, much more than the characteristics of the EA process. The consultants found, however, that there are certain aspects of the British Columbia EA system that could lead to a tendency to complicate potentially complex issues. The EAO is proceeding with planned initiatives to address efficiency and effectiveness issues to ensure a certain, streamlined process.

The second study was an interministry study completed by the EAO in response to concern about the perceived lack of integration between the EA and permit review processes. Implementation of recommendations has resulted in changes in government activities and structures to better coordinate the two levels of review.

The EAO is revising its *Guide to the British Columbia Environmental Assessment Process* and has also developed guidelines for proponents on the preparation of a project application. As the lead agency for management of EA in the context of prevailing public policy, the EAO must be aware of evolving public policy and delivery new policies through EA. For example, new provincial directions regarding rural community development will require integration into specific project assessment procedures.

❖ ALBERTA

Background

The *Alberta Environmental Protection and Enhancement Act* ensures that all projects in Alberta capable of causing a significant environmental effect are subject to environmental scrutiny and review. Preparation of an Environmental Impact Assessment (EIA) report is the most comprehensive of the Ministry of Environment's review procedures.

The *Environmental Protection and Enhancement Act* regulations outline those activities for which an EIA is mandatory, such as pulp mills, oil refineries and large dams. Assessments are most commonly applied to large-scale, complex developments with the potential for significant adverse effects. The assessment process allows for full public participation.

The Director of Environmental Assessment and Strategy is designated as the statutory decision maker for the environmental assessment process. The Minister may order an EIA report be prepared because of the nature of a proposed activity, notwithstanding any decision by the Director, or the fact that a proposed activity may be exempted by regulation.

When an EIA is required, proponents must assess the potential social, environmental and economic impacts of their project and demonstrate how they plan to mitigate the impacts and ensure environmental protection. When an EIA report is submitted, an intergovernmental review team examines the report.

Most major projects in Alberta are reviewable by either the Energy and Utilities Board or the Natural Resources Conservation Board. These quasi-judicial bodies are responsible for determining whether a project is in the public interest. The EIA report provides information necessary for the Boards' consideration of the environmental implications of proposed developments. The EIA report is filed as part of the company's application to the Board. If the Board finds that a public hearing is needed, Alberta Environment participates at these hearings. The department assists the Board by explaining its regulatory responsibilities and its views on the project, including any issues or concerns related to environmental impacts.

Recent Initiatives

In March 1999, *Alberta Commitment to Sustainable Resource and Environmental Management* (the Commitment) was issued by Premier Klein. This document confirms Alberta's commitment to a healthy environment and the wise management of its natural resources through integrated resource management. The approach is based on a shared vision, clear and firm provincial direction, effective decision making and up-to-date provincial legislation and regulation. The document provides the umbrella direction for environmental and resource management policies, initiatives and legislation to support the assessment and regulatory framework. The Deputy Ministers are accountable through the legislatively established Sustainable Development Coordinating Council for integrating the Commitment into legislation, policies and programs.

Alberta addresses cumulative effects through a number of tools, including environmental assessment. Alberta is looking at innovative approaches to dealing with cumulative effects beyond the project-by-project approach. One approach is the Regional Sustainable Development Strategy for the Athabasca Oil Sands, which was developed under the Commitment framework. The Regional Sustainable

Development Strategy provides a framework for balancing resource development and environmental protection in northeastern Alberta through adaptive management. It was developed in partnership with regional stakeholders and regulators, including provincial, federal and municipal governments, industry, Aboriginal groups and Environmental Non-Governmental Organizations.

❖ SASKATCHEWAN

Background

The *Environmental Assessment Act*, legislated in 1980, requires proponents (both public and private) to conduct an environmental impact assessment (EIA) if a development is likely to affect the environment. The program was implemented to ensure that economic development in Saskatchewan would proceed with adequate environmental safeguards and in a manner understood and broadly acceptable to the public.

The Environmental Assessment Branch (the Branch) administers the EIA review process. It is usually initiated by the proponent through submission of a project proposal. This proposal is distributed to the Saskatchewan Environmental Assessment Review Panel to gather multi-disciplinary, technical comment on the project. This panel comprises representatives from various provincial departments and agencies and the Canadian Environmental Assessment Agency (for distribution of materials to federal departments and agencies) according to the *Canada-Saskatchewan Agreement on Environmental Assessment Cooperation*.

The Branch uses the comment it receives from this technical review panel to form an opinion as to whether or not an EIA is required for the project (i.e., whether the project is a "development"). In forming its opinion, the Branch considers whether there will be adequate and acceptable safeguards in place to protect the environment and whether the project raises environmental issues (in relation to the types of impact described above) that need to be vetted in a broader public forum. The developer is asked to document their public notice and involvement efforts in the project proposal.

If the Branch concludes that an EIA is required to resolve outstanding environmental issues associated with the development, project specific guidelines are developed. Draft guidelines are released for public review concurrent with public notice that an EIA is about to be conducted by the proponent. Final guidelines are provided to the proponent to assist in conducting the EIA and in writing the draft environmental impact statement.

Once received, the Branch distributes the draft environmental impact statement to the Saskatchewan Environmental Assessment Review Panel and other technical reviewers, as needed. When the technical review is complete, the public review component of the process begins. Copies of the government's "Technical Review Comments" document and the proponent's environmental impact statement are made available at review centres.

At any time before making a decision on the development, the Minister may initiate public information meetings or establish an inquiry to look into aspects of the proposed development. The proponent cannot proceed with the development until the Minister has considered the comments provided through the technical and public reviews and determines whether, from an environmental perspective, the proposed development should be allowed to proceed and, if so, under what conditions.

Recent Initiatives

Recently, the Act was amended through a consequential amendment when the *Forest Resources Management Act* came into force in April 1999. These amendments, designating Twenty Year Forest Management Plans as "developments", have integrated the techniques of cumulative effect assessment, class assessment and regional assessment in the EIA process for forest harvesting.

The Branch is in the very early stages of looking at developing an overall framework for cumulative effects assessment in Saskatchewan. In addition, a services contract has been signed with the Federation of Saskatchewan Indian Nations (FSIN) to assist in building capacity in the FSIN on environmental issues and to provide a direct contact with the FSIN on issues of which impact First Nations' interests.

The Branch is also working to streamline the review process for oil and gas projects as they apply to smaller-scale routine projects (relating to insignificant issues that are unlikely to require legislative involvement). This would allow the Branch to focus on larger projects with more significant environmental issues. The new streamlined process was implemented in February 1999 and is ongoing. A survey asking, "How are we doing?" was also sent out to industry stakeholders in November 1999, and the Branch is reviewing and addressing some of the comments raised.

The Government of Saskatchewan and the Canadian Environmental Assessment Agency signed a bilateral agreement in November 1999.

❖ MANITOBA

Background

The *Manitoba Environment Act* outlines an EA and licensing process for those developments that may have potential for significant environmental effects. Three classes of development are identified: Class 1 (mainly pollution-related); Class 2 (activities with environmental impacts caused by factors other than pollution or in addition to pollution); and Class 3 (a small number of large scale projects). Proponents of projects on the list of developments file a proposal with the Environmental Approvals Branch. A Technical Advisory Committee, consisting of provincial and federal departments and the public, screens the proposal to determine its adequacy. Further information requirements, including a full EA, may be required following the screening. Formal public hearings, at the decision of the Minister, can be held to consider the proposal.

Recent Initiatives

In March 1997, the Premier of Manitoba announced the intent of the government to launch a multi-stakeholder consultation initiative to consider and make recommendations to government on how Manitoba can best implement Sustainable Development Principles and Guidelines into decision

making. This initiative includes environmental management, licensing, land use planning and regulatory processes.

In June 1997, Manitoba passed its *Sustainable Development Act*. On proclamation, this legislation will enshrine Manitoba's Principles and Guidelines of Sustainable Development in law and will require government departments to conform with them.

In the fall of 1997, an eighteen member Core Group for the Consultation on Sustainable Development Implementation was established to implement the multi-stakeholder consultation announced by the Premier. An Advisory Committee of approximately sixty members from industry, government and the public supported this group. The Core Group issued a report for the consideration of the Manitoba government in June 1999.

On the subject of EA licensing, the Core Group report focuses on the lack of coordination between:

- environmental assessment and reviews;
- significant resource allocation decisions; and
- development plan amendments.

The report recommends broadening the concept of assessment from the EIA, as set out in the Manitoba *Environment Act*, to an effects assessment that includes the assessment and review of all the sustainability factors of a proposed development. The intent is not to supersede existing municipal planning processes, but rather to encourage greater integration between environmental and municipal planning.

If the Core Group recommendations concerning EA are adopted, the Manitoba Ministry of the Environment would coordinate the review of projects that require multiple resource approvals. The Ministry is currently developing an implementation plan to explore opportunities to operationalize the Core Group's recommendations.

The Core Group report also recommends that the government “work with the Aboriginal peoples to develop a co-operative Protocol to ensure effective involvement of Aboriginal peoples where land use and resource planning, significant resource allocation, environmental licensing and regulatory mechanisms, including effects assessment affect Aboriginal peoples and their lands or their ability to exercise their treaty and Aboriginal rights”. This recommendation is currently under review by the Ministry of the Environment.

Direction from the government is pending on how the *Sustainable Development Act* will proceed and how the recommendations contained in the Core Group report will be implemented. At present, Manitoba continues to apply a single window process for interdepartmental reviews of all development proposals. All provincial proposals are processed through the Environmental Approvals Branch. Federal cooperation is also sought for all proposals pursuant to the 1994 *Canada-Manitoba Agreement For Environmental Assessment Harmonization*.

Manitoba has negotiated a new bilateral agreement with the federal government and awaits Ministerial signing. The new bilateral agreement to harmonize EA will replace the now-expired 1994 agreement that was negotiated prior to the enactment of CEAA.

❖ ONTARIO

Background

The Ontario *Environmental Assessment Act* (EAA) requires that proposed projects be developed and evaluated publicly in light of clearly stated objectives. It also requires the identification and evaluation of potential effects on the environment. The definition of “environment” used in the EAA includes the natural, social, cultural and economic environment. These potential effects must be considered and weighed as part of the proponent’s decision making process.

All projects undertaken by public bodies, for which a Class Environmental Assessment (EA) process or Declaration (an exemption from completing an EA) does not apply, must prepare a full (Individual) EA under the EAA before proceeding. Private sector projects can be designated as subject to the EAA on a case-by-case basis.

An individual EA documents the decision making and consultation process completed by a proponent subject to the EAA. It presents the decisions made by a proponent in assessing the environmental effects, alternatives available, mitigation measures, and advantages and disadvantages of a proposed project.

A key step in the Individual EA process is the development of a Terms of Reference (ToR) document, which is an agreed-upon framework to be employed in the development of the EA. It documents preliminary planning, public and agency consultation and related work by the proponent in the preparation of the ToR for the project. The ToR is reviewed and approved by the Minister. The proponent prepares an EA document in keeping with an approved ToR, assessing the project's potential environmental effects and identifying proposed mitigation measures.

The proponent completes an EA and submits it to the Ministry for public comment and a review by a core government review team comprised of provincial and possibly federal departments and agencies. The Minister makes the final decision on the approval of the proposed undertaking. Regulated timelines require the Minister to make a decision on the EA submission in 30 weeks of submission to the Ministry.

The Minister can make a series of decisions with respect to the project: approve, approve with conditions, reject, or refer the EA to a hearing or mediation. Decisions to approve or reject an EA require concurrence from Cabinet. If an EA is referred to a hearing, limitations can be applied to the length and the scope of the hearing. The Minister's decision is final; there is no other vehicle for appeal within the ministry

A Class EA is a self-assessment process based on an approved, standardized procedure, including prescribed consultation requirements, for projects of a particular “class”. Ministerial approval is not required unless an objection is submitted. Proponents proceed through a Class EA process on their own time frames. Obtaining input from all relevant and affected ministries and agencies is the responsibility of the proponent. Class EAs generally have three levels or “schedules” of assessment related to the complexity of the project.

For more complex projects subject to a Class EA, the proponent makes a report available for the public’s review at the conclusion of their decision making process. At this time, interested and affected parties may request that the provincial Minister of the Environment require the proponent to complete an Individual EA if they feel there are significant environmental effects that have not been effectively considered, or if the Class EA process has not been followed properly. If no requests for elevation to an Individual EA (bump-up) are received within the prescribed time period, the proponent may proceed with the undertaking.

Recent Initiatives

In 1999, the Environmental Assessment and Approvals Branch completed the merger of the Environmental Assessment Branch and the Approvals Branch. The new Branch provides a one-window approach into the ministry’s environmental assessment and approvals program. The integration process identified four key areas of business for the new Branch:

- focus on environmentally significant projects;
- provide excellent client service;
- provide efficient and effective project management; and
- enhance program support.

The Branch is currently testing its four cornerstones and will be monitoring their success over the next year.

The Branch continues to negotiate a bilateral agreement on EA cooperation with the Canadian Environmental Assessment Agency. In order to operate in the absence of a bilateral agreement, the Branch and the Agency determined that an interim arrangement was necessary. This arrangement clearly sets out the roles and responsibilities of all parties under a coordinated EA review process for projects currently or potentially requiring federal and provincial EA approval.

The interim EA coordination process is based on the principles outlined in the draft bilateral agreement. The intent of this interim process is to seek commitment from the federal departments to harmonize environmental assessment processes when projects require a cooperative assessment, in an effort to provide the proponent with increased certainty, clarity and timely decisions. Ontario's Environmental Assessment and Approvals Branch continues to work closely with the Agency on this approach. To date a draft process has been developed and joint training initiatives for federal and provincial staff are being scheduled.

❖ QUEBEC

Background

Regulations to the *Environmental Quality Act* govern EA in Quebec. One set of regulations addresses requirements in southern Quebec and the other two regulations focus on the specific requirements in Northeastern Quebec and in the Territory of James Bay and northern Quebec. This paper focuses only on Southern Quebec.

In southern Quebec, a certificate of authorization is required for specified projects. The proponent files a project notice and the ministry prepares project specific guidelines. The proponent follows these guidelines and prepares the document. The ministry reviews the EIA against the guidelines to determine its acceptability.

The draft EIA is submitted and reviewed for admissibility and, if it is sufficient to make a decision, it is made public. The general public or a municipality may request a hearing, and the Minister decides

whether a hearing is necessary. The Minister undertakes an environmental analysis concurrently with the public review and then recommends whether or not the project may proceed. The environmental analysis report and hearing board report (if the project is referred) form the basis of the Minister's recommendation. In order for the Minister to approve or reject a project, the Cabinet must concur. In terms of monitoring, the ministry and the proponent are both involved in the follow-up stage.

Recent Initiatives

The *Direction de l'évaluation environnementale des projets en milieu terrestre* administers the environmental impact assessment and review for projects in Quebec. This office is currently consulting on the opportunity to undertake a review of the *Environmental Quality Act* and anticipates initiating a review of the legislation in the Fall 2000.

Quebec is also trying to set up a process to carry out strategic environmental assessment at the government-wide level. The strategic environmental assessment initiative comprises an inter-departmental working group and involves 20 ministries. The government's policy on strategic environmental assessment is to make it compulsory for policy, plans and programs to require an assessment using a screening mechanism to determine issues and impacts associated with the undertaking.

The Direction des évaluations environnementales recognizes that the public hearing process is resource intensive and time consuming. One possible solution to minimize the number of projects that are referred to a hearing is to improve the way in which proponents prepare Impact Statements. In response to this, the Direction des évaluations environnementales has developed project specific guidelines outlining the requirements for assessment. These guidelines are intended to provide proponents with the expectations and content requirements for the preparation of "acceptable" Impact Statements. These project specific guidelines enable the Direction des évaluations environnementales to conduct a "conformity" analysis comparing the Impact Statement against the guidelines. The implementation of the guidelines has resulted in fewer unresolved issues at later stages in the assessment and a more streamlined review process.

Quebec has also been encouraging proponents to initiate consultation early in the process in order to assist the identification of issues and facilitate their resolution prior to the hearing stage. In addition, the Direction des évaluations environnementales is working to improve the way follow-up studies are completed. The office would like to spend more resources on reviewing the follow-up studies to assess how the proposed mitigation is addressing impacts. Once a mitigation measure has been identified as an appropriate technique to address certain impacts, this information can be passed on to other proponents, saving them time and money.

Mechanisms to integrate human health issues into EA are also being explored.

❖ **NEW BRUNSWICK**

Background

New Brunswick's statutory framework for environmental assessment (EA) has been in effect since 1987 and is specified in the EIA Regulation of the New Brunswick *Clean Environment Act*. Prior to this time, the process was implemented under a provincial policy. Schedule A of the regulation lists the public and private sector undertakings which require environmental review.

The EA process is comprised of two stages: the Registration stage and the Environmental Impact Assessment stage. The primary difference between these two stages is that the latter includes a requirement for public consultation through public meetings. All projects registered under the EIA regulation are listed on a database which is administered by the Department. There is no formal provision for this in the Regulation.

Following a detailed review of the undertaking in the Registration phase, the Minister will make a determination if further study of potentially significant effects is required. For either stage in the process, terms and conditions are applied. The Minister will issue a decision and if no further study is required the decision is accompanied by Terms and Conditions in a Certificate of Determination.

When a project is registered the Minister appoints an intergovernmental review committee comprised of federal and provincial representatives with technical and regulatory expertise related to the project. This committee, the Technical Review Committee reviews the project and advises the Minister on the potential significant effects and the need for further study. If further study is required, draft guidelines are prepared by the Department and are available for public review. Once guidelines are finalized, the proponent prepared the Terms of Reference, which sets out the methodology for conducting the EIA study. A draft EIA report is prepared by the Proponent and reviewed by the Technical Review Committee and the public if deemed appropriate by the Minister. Once the Minister accepts the report the public has the opportunity to review the documentation and make comments in a public meeting format. For this stage, the Lieutenant Governor in Council issues the decision and the terms and conditions as appropriate, based on the recommendation of the Minister of the Environment.

Recent Initiatives

The New Brunswick Department of Environment Project Assessment Section, which is mandated with administering the EIA Regulation, has undertaken a number of administrative changes with respect to the interpretation of requirements to meet the intent of the regulation. Proponents are required to complete comprehensive registration documents to allow for a more detailed and thorough review of the undertaking. As a result more projects are being processed within shorter time frames. The Project Assessment Section is also encouraging proponents to consult with the public early in project planning and submit the results of their consultation in relation to their project registration. These measures decrease the likelihood of a project being referred for further study because the Minister has additional assurances that the public are aware of the project and issues have been identified.

Conflict resolution techniques are also being used by the EIA planners and applied to projects where issues are outstanding between the proponent, government and the public.

A large percentage of those projects reviewed under the provincial EIA are also subject to CEAA reviews. Although New Brunswick has as yet no formal harmonization agreement with the federal government, the province has an informal arrangement with several federal regional agencies for

participation and information sharing on provincial reviews. For CEAA reviews, however, only some federal agencies use the information and documentation prepared for the provincial reviews.

❖ PRINCE EDWARD ISLAND

Background

In Prince Edward Island, the *Environmental Protection Act* states that no undertaking (as identified in an attached schedule attached to the legislation) shall be undertaken unless a written proposal is filed with the Department of Technology and Environment and written approval is obtained from the Minister. The Minister can require additional information, require the preparation and submission of an EIA, notify the public of the proposal, and provide opportunity for comment. The Minister also determines what the document shall contain.

The proponent files a written proposal that is then screened by the Department and the Interdepartmental Technical Review Committee, including federal and provincial departments. The committee may request additional information prior to making a decision to require an EIA. Project specific guidelines and project specific terms of reference are available to the proponent if an EIA is required.

The department provides public notice of a review and advice regarding how the public should be consulted. The proponent prepares the study and submits it to the committee for their review; this also includes a notice to the public for their review and comment. An assessment review panel may be convened where there is a strong public interest.

Recent Initiatives

While there are no formal plans to change the current EIA requirements, the department believes that a full review and update of the review and assessment process is due.

The department has prepared project specific guidelines to guide proponents on issues related to the content and requirements of an EA. The department is also considering the preparation of a formalized protocol for public notification and timelines.

The province is not formally engaged in negotiations with the Canadian Environmental Assessment Agency to develop a bilateral agreement. However, the department maintains a good working relationship with the federal departments on projects which trigger an assessment under CEAA.

❖ NOVA SCOTIA

Background

The *Nova Scotia Environment Act* establishes a context for EA requirements by identifying general environmental goals and principles. Part IV of the legislation provides for the EA of adverse effects and environmental effects of undertakings. The intent of this part is to provide an opportunity to examine projects (undertakings) early in the planning stages. The *Environment Act* is applied to a list of undertakings (Schedule "A") for which a proponent must register. Class II undertakings require an EA and public review which could also include public hearings. Public hearings are also required for Class I undertakings although, in these cases, the Minister decides whether an EA Report is also required.

The review of all undertakings is bound by time requirements at all steps. Ministerial decision options for Class I undertakings include approval, rejection, more information, focus report, or an EA report. For Class II undertakings, the Administrator prepares a terms of reference for an EA report, after consideration of government and public comment. The proponent bases the EA report on the terms of reference and submits a draft for review by the Administrator. A final EA report is submitted and must be referred to an Environmental Assessment Board (optional for Class I projects). Public and government consultation is required for EA reports not referred to the Board. The Administrator summarizes the comments and makes recommendations to the Minister when an EA report is not referred to a Board. The Board prepares a report and recommendations to the Minister, upon which

the Minister can either reject (with reasons), approve or approve with conditions. The legislation contains a provision for alternative dispute resolution at any stage.

Recent Initiatives

The Nova Scotia Environmental Assessment Branch will be undertaking a five-year review of the provincial *Environment Act* in 2001, and it is anticipated that EA is likely to be a major part of that review. In January 2000, the Nova Scotia Department of the Environment released a public discussion paper outlining the review of their *Environment Act*. The stated objectives of the review are: to work with government, the public and client groups to review and refine the legislation; to focus the Department of the Environment's mandate and resources; and to improve its ability to protect the environment. Some of the proposed improvements to the regulations include: timelines for public comment and administration of the process; mechanisms to streamline the environmental assessment process; clarifying key definitions; and refining and focusing the list of undertakings subject to the *Environment Act*. The deadline for submitting comments on the proposed changes is April 14, 2000.

Concurrently, the EA Branch is conducting an internal program assessment to review goals, priorities, and direction. The EA Branch is exploring the need to create further policies or internal operating bulletins, and is also considering the development of sector specific guidelines for registration requirements and proponent guidance on the EA process.

Nova Scotia is not formally engaged in negotiations with the federal government to develop a bilateral agreement. In the absence of a bilateral agreement, the province has established project specific arrangements with the federal government to harmonize EA processes. For example, Nova Scotia Department of the Environment entered into a multi-party agreement with the Canadian Environmental Assessment Agency, the National Energy Board, Nova Scotia Natural Resources, and Canada–Nova Scotia Offshore Petroleum, Board and Natural Resources Canada to set out a general process to assess the Maritime and Northeast Pipeline Project and establish a joint panel.

❖ NEWFOUNDLAND

Background

The *Environmental Assessment Act* for Newfoundland and Labrador became law in November 1980. It requires that projects listed in Schedule A be registered with the Department of Environment and Labour. The Minister may require any project with potential environmental effects to be registered with the Department for review.

The Minister decides whether or not the project may proceed, or whether either an Environmental Preview Report or an Environmental Impact Statement is required. An Environmental Preview Report provides readily available information about the project and its environmental effects in addition to information contained in the registration document. If there are no significant environmental impacts, the review is straightforward and the Minister may release the project from assessment after the initial 45 day review period.

If there are potential significant project impacts, an Environmental Impact Statement and/or public hearing may be required. For an Environmental Impact Statement, draft Terms of Reference are prepared outlining the content requirements. An Assessment Committee, made up of provincial and federal representatives and the public, reviews the Terms of Reference. The Assessment Committee and the public also review the Environmental Impact Statement, following which the proposal may be referred to the EA Board if there is strong public interest or concern. Once the Environmental Impact Statement process is complete, Cabinet makes the final decision on whether to approve the project and under what terms and conditions.

Recent Initiatives

The Newfoundland Department of Environment and Labour anticipates that reforms to the provincial EA process will be enshrined in legislation during the spring 2000 legislative session.

The department is also working to consolidate its environmental legislation into the *Environmental Protection Act*. This new legislation will incorporate and replace the *Environment Act*, the *Environmental Assessment Act*, the *Packaging Material Act*, the *Pesticides Control Act*, and the *Waste Material Disposal Act*. This legislative initiative is expected to enhance EA reforms and make the delivery of EA and environmental protection more efficient and effective.

The department does not have a bilateral agreement with the federal government but may initiate talks on harmonization with the federal government this the year. A good working relationship between the province and both Department of Fisheries and Oceans and Environment Canada exists for EA and environmental protection activities

Discussions are underway with respect to the EA chapter of the Aboriginal Land claims treaties and an agreement-in-principle has been reached with the Inuit.

❖ YUKON

Background

The Yukon Territory does not presently have a legislated EA process in effect. CEAA currently applies to most of the territory and is administered through the Department of Indian and Northern Affairs. The Department of Renewable Resources has an Environmental Assessment Section to speak on behalf of the Yukon Territorial Government regarding impacts and mitigation for projects within the territory.

Recent Initiatives

Development of a formal EA process for the Yukon Territory is ongoing. The catalyst for this process was the signing of the Council for Yukon Indians' (now called the Council for Yukon First Nations) Umbrella Final Agreement on May 29, 1993. This agreement sets out basic objectives for a new Development Assessment Process for the Yukon. The Government of Canada is to enact new EA

legislation and both levels of government are to amend existing laws, where necessary, to facilitate this process.

The proposed Development Assessment Process legislation:

- includes only one assessment process (the Development Assessment Process meets CEAA requirements and will be the EA process for the majority of projects in the Yukon);
- applies to projects on all federal lands, Commissioner lands and Yukon First Nations lands in the Yukon;
- contains a mandatory project list (reviewable by the board);
- contains a timelines regulation;
- establishes 6 Designated Offices to screen projects, review projects, make written recommendations and maintain a public registry;
- establishes the Yukon Development Assessment Board, including both an Executive Committee and Panels;
- includes special provisions to protect First Nations' interests, to facilitate First Nations consultation and participation and to use traditional knowledge;
- addresses linkages to regional land use plans, transboundary effects and other reviews;
- provides for a decision body, which will vary depending on the proponent, regulator, or funder (in the case of government); and
- provides for class or area assessments.

The proposed *Yukon Development Assessment Act* will be a federal law. The Development Assessment Process will come into force following passage of the legislation. A new draft of the legislation and regulations are currently being developed, taking into account public comments. Enactment is expected to occur in 2001-2002.

Trends in Environmental Assessment Among Provinces and Territories

(i) Focusing the Environmental Assessment Process

Provinces are seeking to minimize the number of projects referred to full EA review, in order to focus on the more environmentally significant projects (British Columbia, Saskatchewan, Ontario, New Brunswick, Nova Scotia). This more impact-based approach is being implemented through reclassifying thresholds, and streamlining reviews for smaller and less environmentally significant projects. As part of streamlining initiatives, provinces are developing improved guidelines which include direction on scoping the review of projects within the existing policy and legislative mandates of the respective review agencies.

(ii) Streamlining Procedures

All provinces are pursuing improvements in procedures that will streamline their provincial EA processes to continue to reduce overlap, duplication, inefficiencies and delays.

At least four provinces (British Columbia, Ontario, Quebec, New Brunswick) are integrating EA with other environmental approvals, either formally through merging EA and approvals agencies or by establishing stronger links between EA and permitting.

A variety of procedural or regulatory changes have recently been introduced or are being considered, as follows:

- official timelines for public comment and administration of the process are being improved or considered (Nova Scotia, Prince Edward Island, Yukon);
- routine or well-prepared projects are being processed at earlier stages of review (British Columbia, New Brunswick); and

- at least three provinces (British Columbia, Quebec, Prince Edward Island) have already developed detailed guidelines for proponents; British Columbia's are under revision and Nova Scotia is considering developing guidelines.

The province of Quebec is investigating the success of mitigation required by EA reviews in an effort to identify mitigation measures that can be applied in other projects. This approach would ultimately result in a set of standard mitigation requirements, in some cases allowing more streamlined EA by reducing the need for extensive and time consuming studies to arrive at the same mitigation requirement. Similarly, British Columbia is encouraging agencies participating in EA reviews to standardize their requirements, where appropriate, for baseline information, study methodologies and mitigation. This 'performance standards' approach reduces administrative complexity and uncertainty and allows the focus for certain types of projects or activities to be on monitoring and enforcement.

These moves to better focus provincial EA, streamline the process, and integrate EA into regulatory processes are consistent with similar trends in other parts of North America and international jurisdictions (Lawrence 1999, Adams and Brown 1999).

(iii) Improved Guidelines for Cumulative Effects Assessment

Alberta and British Columbia have developed generic terms of reference for cumulative effects assessments. These terms of reference are then adapted for the needs of each project and have been successful in reducing duplication between provincial and federal procedures.

Given the many concerns expressed by proponents and the public over cumulative effects requirements, including the responsibility for assessing these effects, several provinces, particularly Alberta, Saskatchewan and British Columbia, are concerned with development of a broader framework for assessing cumulative effects. The goal would be to examine development activities in an entire region or for a class of projects in a region rather than on a project specific basis. Also, where sub-regional or regional information is available, this information would provide the context for project specific assessment and decisions.

(iv) Strategic Environmental Assessments/Regional Environmental Assessments

In many project specific reviews, the public raises issues that are more appropriately placed in a Strategic EA , e.g. broad policy questions that are outside of the scope of a single project review. Because EA processes are constructed to work within existing policy frameworks, they are not equipped to undertake a Strategic EA review on a project-by-project basis. Current examples of Strategic EA in provincial decision making indicate that Strategic EA is generally available, at least in terms of principles and procedures, and appears to be evolving as an overarching aid to decision making. To become relevant to the public, Strategic EA must incorporate meaningful public consultation. This is a different approach than that identified as Strategic EA by the federal government as undertaken for federal decisions.

Regional assessment is becoming recognized provincially as a necessary tool to be applied to assist with specific decisions. Often the regions subject of assessments are provincial lands. Provinces often work with other governments in undertaking the assessments.

Strategic EAs have been undertaken in Ontario (Review of Ontario Hydro's Demand Supply Plan) and in British Columbia (Salmon Aquaculture Review). Quebec's initiative to establish Strategic EA involves multiple ministries and an interdepartmental working group. The proposed Yukon Development Assessment Process provides for category or area assessments which can incorporate elements of Strategic EA. Although not specifically called Strategic EA, Manitoba's proposed initiative on how best to implement sustainable development principles and guidelines into decision making would be a type of Strategic EA screen, if applied to overall policies and programs as planned. Regional environmental assessments can also be a form of Strategic EA. Alberta's Regional Sustainable Development Strategy for the Athabasca Oil Sands resulted in a framework for development to balance all interests.

Conclusions

- 1. The provinces and territories have made substantial advances in the practice of environmental assessment in their respective jurisdictions since CEAA was first enacted. Advances will continue to evolve.**

In the past five years, a more selective and well defined approach to environmental assessment has developed in provincial jurisdictions and is being developed in the Yukon. Several provinces have enacted more comprehensive environmental legislation or undertaken initiatives to integrate and improve existing environmental legislation. There have been advances in the development and application of Strategic EA.

In terms of the CEAA Five Year Review this suggests that adjustments to CEAA are required to recognize and accommodate the improvements to provincial environmental assessment legislation and practice since 1995.

- 2. Provincial and territorial approaches to environmental assessment are reflect the unique situation of each province and territory and are tailored to the needs of each government. A rigid "one-size fits all" approach when applying CEAA is not appropriate.**

The provinces and territories have developed environmental legislation in response to their respective needs and circumstances. While the details of the respective legislation differ, the provinces and territories share a fundamental commitment to their constitutional responsibilities for the environment. In the practical application of CEAA the federal government should be responsive to the differences in the EA processes developed by each of the provinces and territories.

Planning level EA is being reserved for fewer, higher impact projects. In the interests of administrative and regulatory certainty, the procedures and boundaries of all levels of environmental assessment are being reviewed, rationalized and improved.

3. Provinces and territories are developing more comprehensive review processes that link planning level environmental assessment to post-review permitting processes.

Provincial and territorial jurisdictions are increasingly concerned with closer integration of environmental assessment and subsequent regulatory approvals, permits and licenses. Amendments to CEAA and Agency guidance to federal authorities, and bilateral agreements should recognize and support this trend toward more integrated decision making that builds on existing available information.

References:

Adams, Peter & Brown, Daryl. *A Comparison of the Environmental Assessment Process in Selected Jurisdictions - Phase One Final Report*, BC Environmental Assessment Office, October 1999.

Canadian Environmental Assessment Agency. *Review of the Canadian Environmental Assessment Act, A Discussion Paper for Public Consultation*. Government of Canada. December 1999.

Environmental Assessment Administrators Annual Report. September 1999. (unpublished)

Lawrence, David. *Trends in Environmental Assessment*. Canadian Environmental Assessment Agency, Government of Canada. August 1999.

Stinchcombe, William Kirk. *Strategic Environmental Assessment, Sustainability and the Case of British Columbia's Salmon Aquaculture Review*, University of Waterloo, Department of Environment and Resource Studies. January 2000.